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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,703	08/01/2003	Gary Smith	0241-P02965US2	3628
110 7590 01/16/2008 DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			EXAMINER CHARLES, MARCUS	
			ART UNIT 3682	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/632,703

Applicant(s)

SMITH ET AL.

Examiner

Marcus Charles

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25-35 and 37-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25-35 and 37-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

TAILED ACTION

This action is responsive to the submission filed 10/31/2007, which has been entered.

Claims 1-23, 25-35 and 37-47 are currently pending.

Continued Examination Under 37 CFR 1.114

1. The request filed on 10-31-2007 for a Request for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application 10/632,703 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "in a way" renders the intended scope of the claim unclear because it is not clear as to what way is "in a way" referring to.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-23 and 25-35 and 37-47 are rejected under 35 U.S.C. 102(a) as being anticipated by Cura et al. (6,855,079). Cura et al. discloses the claimed invention 6 in figs. 1-15) including housing (40) with an open lower end, a base (20) with a closed end

closing the opened lower end of the housing, a first connector on the base (20), a shaft (30) disposed within the housing and projecting upwardly from the base and fixedly attached to the base, an arm (60) having first and second ends with a second connector a bearing (50) disposed within the housing and connected to the shaft and the housing so that the housing is rotatable relative to the base, a reversible biasing element (35) disposed in the housing and inherently providing a torque to bias the housing relative to the base in first and second clockwise and anticlockwise directions; the biasing spring is capable of being removed and diametrically replaced so that the biasing force is opposite the first biasing, an indicator (see fig. 3) indicating the direction of the biasing element in both a relax and tension state.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 8-23, 25-35 and 37-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP403-163245) in view of JP (04-3477043) and St. John (4,957,471). JP403-163245) discloses the claimed invention including the tensioner comprising a housing (26) with an open lower end, a base (3) with a closed end (11) closing the opened lower end of the housing, a first connector on the base (see 20/17), a shaft (13) disposed within the housing and projecting upwardly from the base and fixedly attached

to the base, an arm having first and second ends with a second connector (see connection between 20 and (20/17) on the first end, a bearing (28) disposed within the housing and connected to the shaft and the housing so that the housing is rotatable relative to the base, a reversible biasing element (7) disposed in the housing and inherently providing a torque to bias the housing relative to the base in first and second clockwise and anticlockwise directions. It is apparent that the biasing spring is capable of being removed and diametrically replaced so that the biasing force is opposite the first biasing. JP (403-163245) is silent concerning rearranging the spring so that it biases the arm in the reverse direction. An example can be found in EP (0482382), which discloses a tensioner having a spring (40) biasing an arm (10) in a first direction (note the direction of the end of the spring engaging the post (11) in fig. 6), and the spring (150) biasing the arm (110) in a reverse direction. Therefore, the biasing element is inherently reversible. JP03-163245) does not disclose the first connector of the housing is cooperable with a second connector of the arm to attach the arm to the housing. JP (04-347043) discloses a tensioner having a housing (11) with a lower end, an arm (4) having an end with a connector (4a/5) cooperable with the connector (11b) of the housing to attach the arm to the housing. Therefore, it would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the tensioner of JP403-163245) so that the arm is removable attached to the housing in view of JP (04-347043) in order to be able manipulate/adjust the arm without interfering with the housing. In addition, JP403-163245) does not disclose an indicator for indicating the direction of the biasing element. St John discloses a tensioner comprising an indicator

(114 and a button on pointer 15, see attached drawing illustration) that inherently indicates the rotational movement of the arm and to indicate the amount of tension in the system and the amount of torque in the spring. If the direction of the spring is reversed, the direction of the pointer will be in the opposite towards the left or the ring of the indicator (14), thus indicating the preferred direction of the biasing forces in the relaxed state. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of JP403-163245) to include an indicator in view of St. John in order to indicate the amount of tension in the system and the amount of torque in the spring.

In claim 2, note the indicator is cooperable with/* the spring to indicate the direction of the biasing force.

In claim 3, Note the indicator is capable of indicating the direction of the biasing force.

In claims 4-6, 8-22, 25-33 and 41-47, the prior art inherently indicates the claimed invention.

In claims 34-35 and 37-40, the method claims are inherently included during the operation of the combination of JP403-163245), JP (04-3477043) and St. John device.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 and 25-35 and 37-47 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,855,079. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious variations in breath and scope.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (571) 272-7101. The examiner can normally be reached on Monday-Thursday 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ridley Richard can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Marcus Charles
Primary Examiner
Art Unit 3682
January 08, 2008